

# HOUSE BILL REPORT

## ESSB 5321

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### As Reported by House Committee On: Finance

**Title:** An act relating to extending a local sales and use tax that is credited against the state sales and use tax.

**Brief Description:** Extending a local sales and use tax that is credited against the state sales and use tax.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Kline, Pflug, Berkey, Shin, Hobbs, McAuliffe, Tom, Keiser, Jarrett and Kauffman).

#### **Brief History:**

##### **Committee Activity:**

Finance: 3/20/09, 3/27/09 [DPA].

#### **Brief Summary of Engrossed Substitute Bill (As Amended by House)**

- Allows the City of Seattle to impose the annexation services sales and use tax up to \$5 million per year.
- Increases the maximum annexation services sales and use tax rate cap by 0.1 percent beginning July 1, 2011, for cities that have annexed an area prior to January 1, 2010, and would have otherwise qualified for the tax for the area if not for the rate cap.
- Extends the date to January 1, 2015, as to when a city must commence an annexation in order to impose the annexation sales and use tax.
- Allows a city or town with a prohibition or limitation on house-banked social card game businesses to allow such businesses to continue operating if the business is located in a newly annexed area and it can be demonstrated that the business will reduce the state sales and use tax credit for annexations.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member.

**Staff:** Jeffrey Mitchell (786-7139)

**Background:**

Under the state's Growth Management Act, counties establish urban growth areas (UGAs) in collaboration with cities. Within a UGA, counties are the providers of regional services and cities are the providers of local services until the UGA becomes part of an existing city either through annexation or incorporation. In 2004 the Legislature directed the Department of Community, Trade and Economic Development (CTED) to study the progress of annexation and incorporation in six urban counties, and to identify both the barriers and incentives to fully achieving annexation or incorporation of the UGAs in these counties. Lack of funding for municipal services during the transition period following annexation was one of the barriers identified by cities. In 2006 legislation was enacted allowing a city to impose a sales and use tax to provide, maintain, and operate municipal services within a newly annexed area. The tax is a credit against the state sales tax, so it is not an additional tax to a consumer. There are several requirements that have to be met before a city may impose the tax. The city must:

- have a population less than 400,000;
- be located in a county with a population greater than 600,000;
- annex an area consistent with its comprehensive plan;
- commence annexation of an area having a population of at least 10,000 prior to January 1, 2010; and
- adopt a resolution or ordinance stating that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue the city would otherwise receive from the annexed area on an annual basis.

The tax rate is 0.1 percent for each annexation area with a population between 10,000 and 20,000 and 0.2 percent for an annexation area over 20,000. The maximum cumulative tax rate a city can impose is 0.2 percent. The tax must be imposed at the beginning of a fiscal year and must continue for no more than 10 years from the date it is first imposed. All revenue from the tax must be used to provide, maintain, and operate municipal services for the annexation area. Sales and use tax revenue may not exceed the difference of the amount the city deems necessary to provide services for the annexation area and the general revenue received from the annexation. If the revenues do exceed the amount needed to provide the services, the tax must be suspended for the remainder of the fiscal year. Prior to March 1 of each year, the city must notify the CTED of the maximum amount of distributions it is allowed to receive for the upcoming fiscal year.

On December 4, 2008, the cities of Burien and Seattle reached agreement regarding the annexation of an unincorporated area located between the two cities. This area is referred to as the North Highline area. The population within this area is approximately 33,000. The City of Seattle will annex a portion of the area with a population around 20,000. The City of Burien will annex the remainder of the North Highline area.

The Washington State Gambling Act (Act) grants the Gambling Commission (Commission) exclusive authority to license and regulate gambling activities. The Commission may issue licenses to conduct social card games, including house-banked card games, as a commercial stimulant. The Commission may not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses. A local jurisdiction's authority over gambling activity is limited to absolutely prohibiting a gambling activity and imposing restrictions such as parking requirements that apply to other commercial activities. In 2003 the State Court of Appeals (Court) invalidated a city ordinance that banned certain new gambling facilities but allowed existing ones to continue to operate for five years. The Court ruled that the "phasing-out" provision amounted to a regulation of gambling activity and was preempted by the Act. The Commission identifies about 20 jurisdictions that have zoning ordinances, partial bans, or moratoria relating to card games. About 80 card rooms currently operate in the state.

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**Summary of Amended Bill:**

A city with a population over 400,000 is allowed to impose the annexation services sales and use tax at a rate of 0.85 percent for a single annexation area with a population of at least 10,000. The total amount of revenue a city with a population over 400,000 may receive from the tax is limited to \$5 million per fiscal year.

A city that has commenced annexation of enough areas prior to 2010, which would have allowed it to exceed the 0.2 percent limit, may receive an additional 0.1 percent sales tax credit beginning July 1, 2011.

The date that an annexation must commence in order to impose the annexation sales and use tax is extended by five years to January 1, 2015.

If a city or town, with a prohibition or limitation on house-banked card games, annexes an area in a jurisdiction that permits card games, the city or town may allow the continued operation of card games in the annexed area if it can be demonstrated that tax receipts generated by the business operating the card games will reduce the annexation sales and use tax imposed by the city.

**Amended Bill Compared to Original Bill:**

The amendment increases the amount of tax credit a city with a population over 400,000 may receive up to \$5 million per year. The amendment reduces the commencement date for annexations to qualify for the annexation services sales and use tax from 2021 to 2015. The amendment allows a city or town with a prohibition or limitation on card games that annexes an area in a jurisdiction that permits card games, to allow the continued operation of card games in the annexed area under certain conditions.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) There a number of large, urban areas that are still unincorporated in King County that will require services and infrastructure and this bill will help cities finance those annexations. There has been concern that there is not enough time to qualify for the state sales tax credit. Current law has a January 1, 2010 deadline and this bill will allow for additional time.

(With concerns) The current tax rate in this bill only allows for \$600,000 in sales tax credit. This should be changed to language found in the House companion bill 1710 that the Finance Committee passed earlier this session.

(Opposed) None.

**Persons Testifying:** (In support) Denis Law, City of Renton Mayor; Martha Koester; Gerald Robinson; and Liz Giba.

(With concerns) Kenny Pittman, City of Seattle.

**Persons Signed In To Testify But Not Testifying:** None.